

Dated: December 21, 2016

The following is ORDERED:



A handwritten signature in black ink, reading "Tom R. Cornish", is written over a horizontal line.

TOM R. CORNISH  
UNITED STATES BANKRUPTCY JUDGE

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE:

OTHEL H. GAMBLE, JR.

Case No. 16-80194-TRC

Chapter 7

Debtor.

PINNACLE AGRICULTURE  
DISTRIBUTION, INC.,

Plaintiff,

v.

Adv. Case No. 16-8018-TRC

OTHEL H. GAMBLE, JR.,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE  
SECOND AMENDED ADVERSARY COMPLAINT**

Before the Court is Plaintiff's Motion for Leave to File Second Amended Adversary Complaint (Docket Entry 15), Defendant's Objection (Docket Entry 19), and Plaintiff's Reply Brief in Support of its Motion (Docket Entry 20). After review of the pleadings and file, the Court finds that the Motion should be granted.

This adversary case was filed September 16, 2016. Before serving its original complaint, Plaintiff filed an amended complaint on September 22, 2016. Defendant filed answers to both the original complaint and the amended complaint. Defendant's wife, Kay Gamble, appeared before the Chapter 7 Trustee for a 2004 exam in the main case on November 10, 2016. Plaintiff then filed the subject Motion for Leave to File Second Amended Adversary Complaint ("Motion to Amend") on November 17, 2016. It was filed before the deadline of November 28, 2016 set in the Court's Scheduling Conference Order for filing amendments to pleadings (Docket Entry 17).

Plaintiff asserts that it gained new information from Mrs. Gamble's 2004 exam that was unknown and could not have been included in its original and first amended complaints. It seeks to add claims under 11 U.S.C. §§ 727(a)(2) and (4). Its First Amended Complaint includes claims under 11 U.S.C. §§ 727(a)(3) and (5), and § 523(a)(2)(A). Defendant objects to allowing Plaintiff a second opportunity to amend its complaint, for the reason that the allegations Plaintiff wishes to add are factually incorrect or include facts previously known to it.

Under Fed. R. Civ. P. 15(a)(1) and (2), a party may amend its complaint once as a matter of course within twenty-one (21) days after serving it and after that "only with the opposing party's written consent or the court's leave. *The court should freely give leave when justice so requires.*" (emphasis added). The granting of leave to amend pleadings is within the sound discretion of the court, the purpose being to decide the case on the merits rather than limiting issues through procedural hurdles. *See Minter v. Prime Equipment Co.*, 451 F.3d 1196, 1204 (10th Cir. 2006)(citations omitted). Motions under Rule 15 are usually denied only upon a showing of undue delay in seeking to amend, undue prejudice to the opposing party, bad faith or dilatory motive, or futility. *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993)(citations omitted). None of those circumstances exist here.

Plaintiff's Motion for Leave to Amend is timely in that it was filed before the deadline imposed by this Court. The Court detects no bad faith or dilatory motive. On the contrary, Plaintiff has provided ample support for its need to amend based upon information learned through a non-party after it filed its complaint and amended complaint. Adding additional causes of action under 727 does not seem unduly prejudicial to Defendant at this early stage of the case. Defendant will have ample opportunity to conduct discovery regarding all of Plaintiff's claims as well as prepare his defense. Defendant's grounds to deny the Motion appear to be in the nature of answers to the new allegations or a motion to dismiss rather than grounds supporting injustice or undue prejudice that he would suffer if leave is granted. Therefore, the Court finds that Defendant's grounds to deny the Motion for Leave to Amend are insufficient, and justice is best served by allowing Plaintiff to amend its complaint.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Leave to File Second Amended Adversary Complaint (Docket Entry 15) is **granted**. Plaintiff shall file its Second Amended Complaint within three (3) days of the entry of this Order. Defendant shall file his answer within fourteen (14) days after Plaintiff files its Second Amended Adversary Complaint.

The hearing set on January 11, 2017 is hereby stricken.

Movant shall notify interested parties regarding the entry of this Order.

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